Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Piedmont Television of Anchorage License LLC	)	Facility I.D. No. 35655
Licensee of Station KTBY(TV)	)	NAL/Acct. No. 0841420006
Anchorage, Alaska	)	FRN: 0003747862

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 24, 2007 **Released: October 26, 2007**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")* issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),[1] by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,[2] we find that Piedmont Television of Anchorage License LLC (the "Licensee"), licensee of Station KTBY(TV), Anchorage, Alaska (the "Station"), apparently willfully and repeatedly violated Sections 73.670 and 73.3526(e)(11)(iii) of the Rules, by failing to comply with the limits on commercial matter in children's programming, and by failing to publicize the existence and location of the Station's Children's Television Programming Reports, respectively.[3] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars ($20,000).

II. BACKGROUND

2. In the Children's Television Act of 1990, (the "CTA"),[4] Congress directed the Commission to adopt rules, *inter alia,* limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").[5]

---

[1] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

[2] See 47 C.F.R. § 0.283.

[3] *See* 47 C.F.R. §§ 73.670 and 73.3526(e)(11)(iii).

[4] Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394.

[5] *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

3. Under the Commission's rules implementing the CTA, each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).[6] The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Section 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in Section 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports.

4. On October 2, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KTBY(TV) (the "Application") (File No. BRCT-20061002ASL). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, the Station failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee reported that between the first and third quarters 2004, the Station violated the children's television commercial limits on 38 occasions. Of these overages, three were 15 seconds in duration and 35 were 30 seconds in duration. The Licensee indicated that the overages resulted from human error. In addition, the Licensee described corrective measures taken by the Station to ensure future compliance with the children's television commercial limits. The Licensee also stated that it "made good" on the commercial overages that occurred during the second and third quarters of 2004 by airing one less 30-second commercial in children's programming in subsequent quarters for each 30 second overage that occurred in the second and third quarters of 2004. Consequently, the Licensee opined, there will have been no commercial overages when assessing the license term as a whole.

5. In Exhibit 24, the Licensee also stated that in September 2006, the Station began broadcasting announcements publicizing the existence and location of its Children's Television Programming Reports and that it would continue to do so at least once each week. The Licensee also indicated that during the previous license term, a Station employee believed that filing the Children's Television Programming Report with the Commission met the requirement to publicize its existence and location.

III. DISCUSSION

6. By the Licensee's admission, on 38 occasions, Station KTBY(TV) broadcast material that exceeded the children's television commercial limits. Such action constitutes an apparent willful and repeated violation of Section 73.670. The number and magnitude of overages at issue here mean that children have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children's Television Act of 1990.[7] In addition, the Licensee's failure to publicize the existence and location of its Children's Television Programming Reports constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(iii) of the Rules. Although the Licensee argued that the overages and the failure to publicize resulted from human error, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing violations of the children's television commercial limits.[8] Furthermore, corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, but that, too, does not relieve the

[6] 47 C.F.R. § 73.671.

[7] *Id.* at 2117-18.

[8] *See, e.g., LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994).

Licensee of liability for the violations which have occurred.[9]

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[10] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[11] The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,[12] and the Commission has so interpreted the term in the Section 503(b) context.[13] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[14]

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of $10,000 for violation of Section 73.3526 and a base forfeiture amount of $8,000 for violation of Section 73.670.[15] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[16]

9. In this case, the Licensee has acknowledged that it violated the children's television commercial limits on 38 occasions. Moreover, the Licensee failed to publicize the existence and location of its Children's Television Programming Reports throughout the license term. Considering the record as a whole, we believe that a $20,000 proposed forfeiture is appropriate for the apparent willful and repeated violations of Sections 73.670 and 73.3526(e)(11)(iii).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Piedmont Television of Anchorage License LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars ($20,000) for its apparent willful and repeated violations of Sections 73.670 and 73.3526(e)(11)(iii) of the Commission's Rules.

---

[9] *See, e.g., WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

[10] 47 U.S.C. § 503(b)(1)(B); s*ee also* 47 C.F.R. § 1.80(a)(1).

[11] 47 U.S.C. § 312(f)(1).

[12] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[13] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[14] 47 U.S.C. § 312(f)(2).

[15] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) *("Forfeiture Policy Statement"), recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

[16] 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement,* 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL,* Piedmont Television of Anchorage License LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[17]

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Piedmont Television of Anchorage License LLC, 7621 Little Avenue, Suite 506, Charlotte, North Carolina 28226, and to its counsel, Joseph M. Di Scipio, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[17] *See* 47 C.F.R. § 1.1914.